

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:)	
)	
Request for Review/Appeal and)	
Request for Waiver)	
Of the Decision of the)	
Universal Service Administrator by)	
)	
McKeesport Area School District)	CC Docket No. 02-6
BEN Number: 125222)	
)	
Schools and Libraries Universal Service)	
Support Mechanism)	
)	
Wireline Competition Bureau)	

REQUEST FOR REVIEW/APPEAL AND REQUEST FOR WAIVER

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

This is an appeal and waiver request of a decision by the USAC Administrator of the Schools and Libraries Division rule regarding service start dates and funding commitments on the Form 486 Notification Letter for Funding year 2009.

USAC Administrator's Decisions on Appeal:

Form 486 Notification Letter

Date of Letter(s):	August 7, 2013
Funding Year 2009-2010:	July 1, 2009 – June 30, 2010
Applicant Name:	McKeesport Area School District
Billed Entity Number:	125222

SLD Contact Information:

Rosemary Enos
McKeesport Area School District
31100 Solon Road
P.O. Box 39490
Solon, OH 44139
Phone: (216) 514-3336
Fax: (216) 514-3337

Funding Request Numbers Appealed:

Form 486 Application Number: 951153
Funding Request Number(s): 1857601, 1858127, 1858157, and 1858197
Service Provider Identification Number(s): 143003990, 143018525, 143000677, and 143001200

USAC's Reason for Denial:

“...120-Day 486 Deadline – TPA...” and “...120-Day 486 Deadline ...”

Issue:

The form 486 for McKeesport Area School District was not filed on time because of special circumstances regarding the district personnel responsible for filing. . During this period, the Technology Director at the District was found to have been habitually using District computers to view inappropriate content. Upon this discovery, the Director abruptly left the position without making any arrangements for E-Rate work to continue.

A number of months passed and no one was named to the position due to the administrator being suspended during an investigation led by the state Attorney General's office.

After several months and a federal investigation that turned up additional facts, the Technology Director was charged with a number of felonies, ultimately resulting in resignation from the District. Needless to say, because many months passed with uncertainty about the position and the responsibilities of the Technology Director at the District, the deadline was missed.

Facts:

McKeesport Area School District was unable to file a Form 486 because of the employee turnover. The former Technology Director left unexpectedly and there was a period where no one was responsible for E-Rate paperwork. The result was the absence of someone to continue the handling of the district's responsibilities for E-Rate. Without these funds, the District will be negatively impacted in the areas of providing Internet access for student and staff instructional use and increased communications bandwidth for enhanced teaching and learning. In addition, McKeesport Area School District has since hired a consultant to correct any E-Rate Program deadline issues.

Argument:

This is an Appeal and Waiver request. The applicant was late in filing a form 486 because of circumstances that caused dates to be missed.

FCC precedent bolsters the correctness of Applicant's position. In the *Douglas-Omaha Technology Commission Order*¹ the Bureau granted a request for waiver of a procedural deadline for the timely submission of a FCC Form 486. Douglas-Omaha claimed that personnel issues and other unforeseen circumstances resulted in the late filing of its FCC Form 486. Specifically, that turnover in personnel was the direct cause of missed filing deadlines. Further, the Bureau states that "*Given that the violation at issue is a USAC deadline, not a substantive Commission rule, we find that the complete rejection of this application is not warranted. Notably, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in this case would inflict undue hardship on Douglas-Omaha.*" Similar circumstances were experienced at McKeesport Area School District.

As the Bureau found in the *Canon McMillan Order*, the FCC states that complete rejection of invoices was not warranted, given that the applicants missed a USAC procedural deadline and did not violate a Commission rule.² In this ruling, the point the FCC makes is that

¹ *Request for Waiver of the Decision of the Universal Service Administrator by Douglas-Omaha Technology Commission, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-427054, CC Docket No. 02-6, 21 FCC Rcd 9277 (Wireline Comp. Bur. 2006) (*Douglas-Omaha Order*) (Granted the request for waiver for USAC's deadline for FCC Forms 486).

² *Request for Review of the Decision of the Universal Service Administrator by Canon-McMillan School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-360219, et al., CC Docket No. 02-6, 23 FCC Rcd 15555 (Wireline Comp. Bur. 2008) (*Canon-McMillan Order*) (Finding good cause to waive USAC's deadline for FCC Forms 472 or 474).

honest clerical or administrative errors must not prohibit getting funds to applicants in accordance with the Congressional mandate set forth in the Telecommunications Act of 1996. The Bureau also states that “*denying the petitioners’ requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding...*”

In *Bishop Perry Middle School, 06-54*, the FCC granted 196 appeals of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism for denying funding due to certain clerical or ministerial errors in the application, *e.g.*, a failure to timely file FCC Forms.³

In *Alton Community Unit School District 11*, the FCC granted 49 appeals of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism for denying funding due to invoice forms being late or not received by USAC. The FCC further states that “*these applicants claim that staff changes or inadvertent errors on the part of their staff resulted in late filing or failure to file.*”⁴

While the FCC has affirmed USAC’s authority to put in place administrative policies to ensure prompt review of applications and prevent the undue delay of the application process, FCC precedent has shown that in cases where there is no evidence of waste of program funds, that eligible schools and libraries should not be denied funding because of staff changes or inadvertent errors.

The USAC’s seminal authority is to guard against waste, fraud and abuse. Waste, fraud and abuse is not present here, only clerical/administrative errors. Because of staff absence and turnover a Form 486 was not filed on time.

³ *Request for review of the decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-265714, CC Docket No. 02-6, 21 FCC Rcd 5316 (Wireline Comp. Bur. 2006) (*Bishop Perry Middle School Order*) (Granted various appeals of decisions by USAC concerning applications for discounted services under the schools and libraries universal service mechanism).

⁴ *Requests for review of the decisions of the Universal Service Administrator by Alton Community Unit School District, 11, Alton, Illinois, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-518052, et al., CC Docket No. 02-6, 25 FCC Rcd 7089 (Wireline Comp. Bur. 2010) (*Alton Community Order*) (Granted various requests for review and waiver of decisions by USAC).

Conclusion:

We respectfully request that the 120 day limit for filing Form 486 be waived, that the service start dates for FRNs 1857601, 1858127, 1858157, and 1858197 be changed to July 1, 2009, and that the funding requests for FRN: 1857601 with funding commitment in the amount of \$27,256.80, FRN: 1858127 with funding commitment in the amount of \$1,968.00, FRN: 1858157 with funding commitment in the amount of \$17,712.00, and FRN: 1858197 with funding commitment in the amount of \$53,136.00, be granted.

Respectfully Submitted by:

/s/ Rosemary Enos

Rosemary Enos
on behalf of McKeesport Area School District
Epic Communications
31100 Solon Road
P.O. Box 39490
Solon, OH 44139
Phone: (216) 514-3336
Fax: (216) 514-3337
rpenos@epicinc.org

September 27, 2013